STUDENT IDENTIFICATION NO.

MULTIMEDIA UNIVERSITY

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FINAL EXAMINATION

TRIMESTER 1, 2022/2023 (TERM ID 2215)

UNL1612 – CONTRACT LAW I

(All Sections/Groups)

22 FEBRUARY 2023

Reading Time : 9.00 am – 9.15 am
(15 Minutes)
Answering Time : 9.15 am – 12.15 pm
(3 Hours)

INSTRUCTIONS TO STUDENTS

1. Students will have **fifteen minutes** during which they read the paper and make rough notes ONLY on their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 4 Pages and 4 Questions only.

3. This Question paper consists of 2 sections. Attempt **ONE** question only in **Section A** and all **THREE** questions in **Section B**. All questions carry equal marks and the distribution of the marks for each question is given.

4. Students are allowed to bring into the examination hall CLEAN and ORIGINAL copy of:
   i. **Contracts Act 1950 (Act 136)**
   i. **Specific Relief Act 1950 (Act 137)**
   ii. **Civil Law Act 1956 (Act 67)**

   "Clean" is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.

5. Please write all your answers in the Answer Booklet provided.

SECTION A: Answer either QUESTION 1(a)(i) & (ii) or 1(b)

QUESTION 1(a)

(i) Section 2(a) of the Contracts Act 1950 provides:

"In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:

(a) when one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to the act or abstinence, he is said to make a proposal; ..."

Explain the above provision and the distinction between a proposal or offer from an invitation to treat. Support your answer with case law authorities.

(15 marks)

(ii) "Promissory estoppel ... is only one form of estoppel. ... Promissory estoppel is one strand in a broader equitable principle where parties to a transaction who have conducted their dealings in reliance of an underlying assumption as to a present, past, or future state of affairs, or a promise, or representation by words or conduct by one that strict legal rights will not be insisted upon will not be allowed to go back on that assumption, promise or representation when it would be unfair or unjust to do so. The Court will do what is necessary, but no more, to prevent a person who has relied upon such an assumption, promise or representation from suffering detriment. ... [T]he principle of promissory estoppel has been employed to obviate the necessity of consideration in cases where parties are already bound contractually one to the other and one of them promises to waive, modify, suspend its strict legal rights."

J. Beatson. *Anson's Law of Contract* (28th ed., OUP 2002) 112 &118.

Discuss the application of the above proposition.

(10 marks)

(Total: 25 marks)

Or

QUESTION 1(b)

Gopal Sri Ram JCA in *Ching Yik Development Sdn Bhd v Setapak Heights Development Sdn Bhd* [1996] 3 MLJ 675, at 683, said:

"Now, in every contract, be it for the sale of land or any other commodity, there are, generally speaking, some terms that are of fundamental importance and others of less or minor importance. The law creates the distinction for the purpose of determining the kind of remedy that is to be made available to an innocent party, i.e. the party who is not guilty of a breach."

Continued...

Explain with reference to the above quotation and other case law authorities the legal consequences of each of the following terms:

(a) Condition,

(10 marks)

(b) Warranty, and

(8 marks)

(c) Intermediate or innominate term.

(7 marks)

(Total: 25 marks)

SECTION B: Answer All Questions

QUESTION 2

On Wednesday 12/10/2022, Lala Sdn Bhd ("Lala") offered by an email to sell 2000 bags of cement to Bina Sdn. Bhd. ("Bina") at RM21.00 per 50kg bag. The offer to Bina states:

> 'Please telephone or email me your acceptance by 12.00 noon on Friday, 14/10/2022. Delivery will take place on Friday, 21/10/2022.'

On the early hours of 13/10/2022, due to bad weather and fierce thunderstorm, Bina office building was struck by lightning bolts and experienced electrical power failure. Since electricity had not yet been restored then, at 1.00 pm the same day, Bina went to the post office to send a letter of acceptance of the offer to Lala by *Poslaju* postal services, expecting it to be delivered to Lala on time the next day. Unfortunately, the *Poslaju* delivery only arrived at Lala's office and delivered the acceptance letter at 1.30 pm of October 14th, as some of the roads were still affected by flash flood.

The stock of cements at Lala's store has already been sold to another construction company 30 minutes before Lala received Bina's acceptance. On 17/10/2022, at 10.00 am, believing that a firm contract has been made with Lala, Bina entered into a binding contract with another company to produce 1000 culverts for their drainage project, using the anticipated delivery of cements on October 21st. Bina did not realise that at 9.00 am the same day, Lala office had emailed Bina a notification that the stock of cements was no longer available for Bina.

With the help of the statutory provisions and case law authorities, advise Bina Sdn Bhd whether there is a binding contract made between Bina Sdn Bhd and Lala Sdn Bhd.

(25 marks)

Continued...

QUESTION 3

Sonia and Bella are intelligent twin sisters. In 2010, when they were 15 years old, they were top achievers at their school. Tech Sdn. Bhd. ('Tech'), a prominent computer company in Penang, offered to send Sonia to London to study for her O-level and A-level certificates, and thereafter to sponsor her for her computer science education up to a degree level at any university of her own choice. Sonia then signed a scholarship agreement with Tech to finance her studies. Tech also provided her with an Apple laptop and a tablet computer, and a car when she started her degree course. According to the agreement, "Sonia shall serve Tech Sdn. Bhd. for seven (7) years after completing her university education". The agreement provided that if Sonia were to breach the agreement to serve Tech for the agreed period, Sonia has to pay Tech compensation or damages in the sum of RM500,000.00.

Meanwhile, Bella remained in Malaysia and continued her studies. She completed her *Sijil Pelajaran Malaysia* (SPM) at the age of 17. In 2012, she accepted a scholarship offer from the Government of Malaysia to study for her A-level certificate and computer science degree programme in London. The agreement required her to serve the Malaysian Government for 10 years after the completion of both her studies. In case of any breach of the service agreement, Bella is bound under the agreement to pay the Government damages in the sum of RM450,000.

Bella and Sonia completed the same degree course at the same university and returned to Kuala Lumpur. Sonia was employed by Tech, and Bella worked with the Ministry of Higher Education. However, they were unhappy with their working environment and the remunerations. After having served five (5) years at their respective workplace, both of them resigned from their respective job and returned to London to work in a leading computer company there. Tech and the Government of Malaysia are bringing an action against Sonia and Bella, respectively, for breach of contract.

With reference to the provisions of the Malaysian statutory laws relating to contracts and relevant case law authorities, discuss Sonia's and Bella's legal position.

(25 marks)

Continued...

QUESTION 4

Dave has completed his 9-month pupillage (chambering) at Lim & Co., Advocates & Solicitors ("Lim"), under his master, Mr. Albert Lim. Two months later Dave was admitted to the Bar and has since become an advocate and solicitor.

Lim offered Dave to continue to stay and work at his legal firm, with a view to making Dave a partner of the firm after completing a 2-year service contract. Dave accepted the offer. On 1st October 2019, Dave and Lim entered into an employment agreement for a duration of 2 years, whereby Dave was engaged as a Legal Assistant and that the firm would consider offering Dave a partnership under a new contract after the completion of the agreement. Clause 12 of the agreement provides, and Dave agreed, that he "shall not for a period of three years, after the termination of his engagement as a Legal Assistant under this agreement, practise as or carry on the business or profession of an advocate and solicitor within a radius of 7 kilometres from the registered office of Lim & Co at Melaka Raya, without first obtaining the written consent of Lim & Co."

Upon expiry of the service agreement on 30th September 2021, Dave continued working at Lim & Co on a month-to-month contract basis until 31st December 2021. On 1st January 2022, Dave left Lim & Co. when there was neither any offer from Lim & Co. to make him a partner of the firm, nor any new contract of service being offered to him. On 1st March 2020, Dave teamed up with his old friend Maidin to open a new legal firm, "Dave, Maidin & Co., Advocates and Solicitors", having an office at another building in Melaka Raya, which is on the same road and, only 50 metres away from where Lim & Co. is located.

Lim & Co. made an application in the High Court to enforce the restraint of trade covenant against Dave.

Discuss, with the help of statutory provision(s) and case law authorities, whether Lim & Co. can succeed in its application.

(25 marks)

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